

Message Text

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C O N F I D E N T I A L LIMA 6236

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TAGS: EINV, EGEN, PFOR, PE

SUBJECT: GOP PROMULGATES DECREE LAW ESTABLISHING NEW
RULES FOR EXPROPRIATION PROCEDURES - LAW
COULD AFFECT GULF AND MARCONA CASES DIRECTLY

REF: A) LIMA 6012, B) LIMA 5403, C) STATE 177723

1. SUMMARY: THREE DAYS BEFORE ANNOUNCING TO THE PUBLIC THE NATIONALIZATION OF MARCONA MINING COMPANY, THE GOP QUIETLY PROMULGATED DECREE LAW 21221 OF JULY 22 WHICH ESTABLISHED NEW REGULATIONS FOR EXPROPRIATION PROCEDURES. THE D.L. GIVES PERUVIAN JUDGES ALMOST COMPLETE AUTHORITY TO DECIDE THE VALUE OF EXPROPRIATED PROPERTY AND NARROWS PROCEDURES UNDER WHICH EXPROPRIATED COMPANIES CAN OFFER INDEPENDENT EVALUATION OF THEIR WORTH TO THE COURTS. BOTH GULF AND MARCONA CASES APPEAR TO BE COVERED BY THE TERMS OF THIS DECREE. END SUMMARY.

2. D.L. 21221 STATES THAT THE JUDGE OF FIRST INSTANCE HAS AUTHORITY TO DECIDE THE VALUE OF EXPROPRIATED PROPERTY. IF EXPROPRIATED COMPANY DESAGREES WITH THE VALUE ASSIGNED TO ITS ASSETS BY THE GOP, THE COMPANY MAY SELECT ITS OWN EXPERT TO EVALUATE THE PROPERTY. THE JUDGE, HOWEVER, ALSO SELECTS AN EXPERT AND THEN MAKES A DECISION BASED ON THE RECOMMENDATIONS OF THE TWO EXPERTS. THE JUDGE'S DECISION MAY BE APPEALED TWICE, FIRST TO THE APPELATE COURT AND THEN TO THE SUPREME COURT. THE D.L.
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ESTABLISHES A TIME LIMIT, A MAXIMUM OF 51 DAYS, FROM THE

DATE THE COMPANY'S EXPERT RENDERS HIS EVALUATION TO THE COURT'S FINAL DECISION. FURTHER, AT ANY STAGE OF THE PROCESS, THE GOP AGENCY EXPROPRIATING THE ASSETS OF A FIRM CAN DEMAND THE IMMEDIATE DELIVERY OF THE EXPROPRIATED PROPERTY. THE D.L. STATES THAT ITS PROVISIONS APPLY TO THOSE EXPROPRIATION CASES NOT OTHERWISE GOVERNED BY SPECIFIC LAW, CASES PRESENTLY UNDER PROCESS AND FOR THOSE WHERE NO FINAL DECISION HAS BEEN PLACED IN THE PUBLIC REGISTER. FINALLY, AND MOST OMINOUSLY, IF ANY OF THE EXPERTS (EITHER THE COMPANY'S OR THE JUDGE'S) ASSIGN A VALUE TO THE PROPERTY OF MORE THAN 50 PERCENT OF THE JUDGE'S VALUE THE EXPERT IS SUBJECT TO A FINE AND TO PENAL ACTION.

3. COMMENT: THIS EXAMPLE OF REVOLUTIONARY PERUVIAN JUSTICE GOES BEYOND THE BOUNDS OF WHAT HAS LOOSELY PASSED IN RECENT YEARS FOR AN INDEPENDENT PERUVIAN JUDICIAL PROCESS AND, UNDOUBTEDLY, IS AIMED AT REDUCING THE POSSIBILITY, HOWEVER REMOTE, THAT PERUVIAN JUDGES MAY DECIDE IN FAVOR OF EXPROPRIATED COMPANIES. FIRST, THE D.L. ASSIGNS THE FINAL EVALUATION TO THE COURTS, WHICH RECEIVE THEIR ORDERS FROM THE PERUVIAN MILITARY GOVERNMENT. SECOND, GIVEN THE POSSIBILITY OF FINES AND/OR CRIMINAL ACTION FOR AN EVALUATION BY AN EXPERT WHICH EXCEEDS THAT OF THE JUDGE, THE D.L. WILL GREATLY LIMIT THE INDEPENDENCE OF THE "EXPERTS" WHO WILL OBVIOUSLY TRY TO PROTECT THEMSELVES FROM CRIMINAL PROCESSES. THIRD, WE SPECULATE THAT THE ORIGINS OF THIS DECREE MAY BE BASED ON THE ORIGINAL HANDLING OF THE IPC CASE BY ULLOA AND HOYOS, WHO MADE RULINGS IN FAVOR OF IPC AFTER ITS EXPROPRIATION (SEE LIMA 3164).

4. ED MCCAIN, FORMER GULF MANAGER, HAS TOLD US THAT HE BELIEVES THAT THIS D.L. WILL MAKE IT MORE DIFFICULT FOR GULF TO MAKE AN EFFECTIVE COUNTEROFFER TO PERU ALONG THE LINES SPELLED OUT IN REF B. MCCAIN WAS TO HAVE DISCUSSED THESE ASPECTS OF GULF'S EVALUATION WITH PETROPERU PRESIDENT FERNANDEZ BACA RECENTLY AND SAID HE WOULD REPORT TO US ANY NEW DEVELOPMENTS. TO DATE HE HAS NOT DONE SO, AND WE PRESUME THAT HE DID NOT RECEIVE MUCH ENCOURAGEMENT FROM PETROPERU THAT IT WOULD BE ABLE TO

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MAKE AN INDEPENDENT EVALUATION OF GULF'S ASSETS, WITHOUT INTERFERENCE FROM THE GOP-APPOINTED JUDGE. WE WILL REPORT ON THIS ASPECT OF THE GULF CASE AS SOON AS NEW INFORMATION IS DEVELOPED, BUT WE DO NOT PLAN TO RAISE THIS ISSUE AT THIS TIME WITH GOP, PER REF C.

5. TURNING TO MARCONA, JAMES COMPTON IS ALSO VERY MUCH AWARE OF THIS DECREE, WHICH HE SPECULATES WAS PROMULGATED

AS PART OF THE MARCONA NATIONALIZATION PACKAGE, GIVEN
THE TIMING OF THE TWO DECREES. IN THE FINAL ANALYSIS,
WE ARE OF THE OPINION THAT THIS DECREE BODES WELL FOR
NEITHER COMPANY.
DEAN

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